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COMMISSION ON HUMAN RIGHTS

Forty-ninth session

SUMMARY RECORD OF THE 28th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 19 February 1993, at 10 a.m.

Chairman: Mr. ENNACEUR (Tunisia)

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Question of the human rights of all persons subjected to any form of detention or imprisonment, in particular:

(a) Torture and other cruel, inhuman or degrading treatment or punishment

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The meeting was called to order at 10.15 a.m.

IMPLEMENTATION OF THE DECLARATION ON THE ELIMINATION OF ALL FORMS OF INTOLERANCE AND OF DISCRIMINATION BASED ON RELIGION OR BELIEF (agenda item 22) (continued) (E/CN.4/1993/62 and Corr.1 and Add.1, E/CN.4/1993/63, E/CN.4/1993/86; E/CN.4/1993/NGO/27; E/CN.4/1992/52)

1. Mr. CHOEPHEL (International Association of Educators for World Peace) pointed out that in the course of the session many non-governmental organizations had expressed concern about the continuing human rights violations in occupied Tibet. The matter had indeed been the object of discussion by the Commission for several years.

2. The International Association of Educators for World Peace had read the report of the Special Rapporteur (E/CN.4/1993/62) and was pleased to see the attention he gave to the lack of religious freedom in Tibet. The 6 million Tibetans suffered the consistent abuse of their religious freedom.

3. The Chinese Government had wished to give the impression, in its communications to the Special Rapporteur, of its respect for the ancient religious traditions of Tibetan Buddhism. But Tibetans had seen the virtual destruction of their religion during the 1950s and 1960s. More than 6,000 monasteries and temples had been destroyed and many people had been persecuted for their religious beliefs. Such persecutions had not occurred only during the Cultural Revolution, as the Chinese authorities would currently have people believe. It was true, as the Chinese delegation had stated the previous day, that some monasteries had been rebuilt in recent years and a number of persons had been allowed to enter the clergy; but that reconstruction had taken place despite the Chinese Government's opposition and thanks to volunteer Tibetan labour. Moreover, as the Special Rapporteur had pointed out, admission to monasteries and nunneries was restricted to people who showed "political correctness". Recent reports indicated that the Chinese authorities were conducting a new indoctrination drive in the monasteries and nunneries. Young monks and nuns were being urged to be patriotic, law-abiding and to love socialism.

4. Religious education was very limited in the monasteries and nunneries, forcing many young monks and nuns to escape to India for serious religious education in the institutions of higher learning set up by the Tibetan Government in exile and many of Tibet's exiled religious leaders.

5. The responsibility for the suppression of religious freedom in Tibet lay with the top echelons of the Chinese leadership. Thus, Chen Kuiyuan, the new Chinese Communist Party Secretary of the so-called Tibet Autonomous Region, had criticized a great number of Tibetan cadres for having photographs of the Dalai Lama in their homes. In an official speech he had warned that cadres should remember that they were atheists.

6. Referring again to the report of the Special Rapporteur, he said that he was particularly disturbed by the Chinese Government's assertions in paragraph 21. First, it misrepresented the facts when it stated that the

Chinese authorities had traditionally played a decisive role in the selection of the Dalai Lama and other Tibetan spiritual leaders. The first Dalai Lama had been given that title by a Mongol Prince and had not been dependent on Chinese Governments for his religious or political authority. The identification and recognition of successive reincarnations of Tibet's spiritual leaders was a religious process, not a political one, as China would have it. It was therefore unthinkable that the Chinese Government would have any role to play in the selection of religious leaders.

7. It was also unacceptable that a Communist regime which had existed for only 43 years and was illegally occupying Tibet should claim the right to change an 800-year-old Buddhist tradition of recognizing incarnate lamas. Yet those same Chinese authorities had claimed to treat Tibetan Buddhist traditions with the utmost respect.

8. In the same report, the Chinese Government denied that the Great Prayer Festival, one of Tibet's most important religious activities, had been banned in recent years. The ceremony, however, ancient and sacred as it was, had not taken place since it had been banned in 1989. The Jhokhang Temple, where the festival had traditionally been held, was not open to an "endless stream of believers", as the Chinese Government claimed, but was open only three mornings a week. In fact, the Chinese authorities were denying the Tibetan people their legitimate right to practice freely their own religious beliefs.

9. Finally, the Association was deeply concerned about the fate of hundreds of monks and nuns who had been detained during the previous six years of renewed repression in Tibet. Many had been given prison sentences ranging from one to nine years merely for taking part in peaceful demonstrations. Torture and other forms of ill-treatment of detainees, particularly monks and nuns, was routine in Chinese prisons in Tibet, as attested by a detainee whose case had been taken up by Amnesty International and whose testimony he read out to the Commission.

10. Mr. BOS (International Federation for the Protection of the Rights of Ethnic, Religious, Linguistic and Other Minorities) said that his organization had been reporting for 10 years human rights violations in Albania, and in particular the treatment of the Greek minority. His Federation had frequently informed the international community of the oppression of the Greek minority and the systematic denial of its human rights.

11. In that connection it was important to stress that the international community should increase its efforts on behalf of all minority groups in the region. Atrocities against civilian minority populations in the Balkans and in Kurdish regions of Turkey and Iraq were of particular concern.

12. The Federation had received reports from a field observer who had visited Greek communities in southern Albania in January 1993. His documented information revealed the continued denial of rights to the Greek minority and evidence of State-sponsored ethnic oppression of the Greek Christian community, by both legal and de facto means.

13. For example, ethnic Greek elected officials in Albania were being systematically thwarted by the State authorities in the sphere of municipal

jurisdiction and education. In April 1992 a political party fielding Greek minority candidates had been prevented from assuming all the seats it had won on the prefecture council when the incumbent council had passed a law, after the elections, to dilute the majority representation of "Greek" representatives. The latter had filed an appeal with federal officials, which had been ignored.

14. The Greek minority was being increasingly ostracized by agents of the State. The federal authorities were also pursuing a policy to make the region of Agioi Saranda, a historically Greek area, an ethnically Albanian region. No police protection was provided for Greek shops and homes, which were frequent targets for robbery and vandalism.

15. From the same region had come 45 personal statements from ethnic Greeks who had been imprisoned on the basis of their beliefs. When they had returned to their homes they had found that Albanians had occupied their houses and taken over their farms with official sanction. The Government was unwilling to assist the families concerned and the courts were deaf to pleas for justice from the Greek minority.

16. It was in the area of education, however, that the federal Government's bias was most blatantly visible. The Greek minority's efforts to provide Greek language instruction in schools had engendered the sharpest attacks from the highest level of the State apparatus. While the schools of other minority groups were allowed to operate in Albania, the State has maintained an unrelenting campaign against Greek language and culture.

17. The Greek minority in Albania was in urgent need of support from the international community and the United Nations family. The Government of Albania, which was a signatory to the Charter of the United Nations, the CSCE Charter and, more specifically, the Protocol of Corfu, granting the Greek minority autonomous status, civil and religious protection and the right to their own schools, should be reminded of its obligations in the strongest possible terms.

18. Mr. DEER (Indigenous World Association) said that the spiritual beliefs and the ceremonies of the indigenous peoples of North America had been practised for thousands of years. Their cycle of ceremonies was clearly defined in their Constitution, the Great Law of Peace, which governed their spiritual, social and political world. Only since the time of European contact had the importance of those ancient ceremonies been challenged.

19. With the advent of the Christian missionaries, who had set out to convert the indigenous peoples to a foreign religion, the long road to cultural genocide had begun. So strong had the pressure to conform to the missionaries' institutions been that their religions had had to go underground to avoid persecution. Only in recent years had they been able to exercise their right to freedom of religion. Even so, the Government of Canada did not recognize their belief as being the equal of its own, refusing, for example, to recognize their naming and marriage ceremonies.

20. The indigenous peoples of Canada therefore routinely suffered from Canadian laws which had an impact on every part of their lives. From the

moment of their birth they were given a number that identified them as "Indians" under the Canadian Indian Act. Since the Government did not recognize their naming ceremonies, their children were not registered under the Indian Act and were therefore not considered to be Indians under Canadian law. Their children had difficulty obtaining health services or education and as they got older they were denied access to land.

21. The matter had been brought up at the forty-third session of the Sub-Commission in 1991, when Canada's response had been that the situation was under study. There had still been no action to resolve the discriminatory situation.

22. He urged the Commission, on the occasion of the International Year of the World's Indigenous People, to pay particular attention to the situation of indigenous peoples in Canada in respect of their freedom of religion.

23. Mr. DIAZ TEKPANKALLI (International Indian Treaty Council), introducing himself as the head of the American Indigenous Church (Iglesia Nativa Americana), said that the International Indian Treaty Council, which represented 98 Indian organizations, wished to convey the views of the Confederation of the Condor and the Eagle of the indigenous communities, peoples and nations of the western hemisphere.

24. He recalled that article 3 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief stated that "discrimination between human beings on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of ... human rights and fundamental freedoms". The International Indian Treaty Council requested the Committee to support and recognize the traditional ways of life and spirituality of indigenous communities, peoples and nations. The latter must be free to exercise their religious beliefs, wherever they might live. It was therefore essential that the right of officiants to use the objects necessary for the enactment of religious ceremonies should be respected. In particular, religious leaders wished to have the right to visit hospitals and prisons and to have access to people requiring spiritual assistance, wherever they might be.

25. Religious leaders were attempting to ensure the survival of the cultural practices, beliefs, ceremonies and traditions passed down to them from their ancestors. They therefore called on all United Nations bodies to help them to express themselves in accordance with their laws, customs and traditions in order to assure the physical, cultural and spiritual survival of their peoples.

26. Some objects and ornaments were essential for religious ceremonies (feathers, animal skins, pipes, staffs, fans, drums, incense, etc.) and use was also made of some plants (coca, mushrooms, peyote, etc.). Altars were sacred areas dedicated for spiritual and medical purposes, around which were performed marriages, naming ceremonies, adoption ceremonies and funerals. They were also used for purification and many other ceremonies symbolizing friendship and brotherhood between peoples. Through such ceremonies, indigenous peoples and nations entered the "house" of their ancestors and

renewed their relationships with their families and with the Creator, thus enabling them to live in harmony with nature. In their philosophy, the sun was the father who provided the warmth in life, the earth was the mother who made life and food fertile, air was the brother which everybody breathed and water was the sister, the well of life at which people quenched their thirst. The four elements were sacred, a heritage to be respected and handed down to future generations.

27. The foreigners who had landed in America 500 years ago had had no understanding of those peoples' spirituality or religion and had attempted to impose by force a belief which went against nature. They had built churches on the holy places and had conducted the "Holy Inquisition". Today, sacred places were being flooded, destroyed or profaned in "development" projects and the indigenous spirituality was once again being violated.

28. Archaeological and anthropological studies had shown that peyote had been used for 10,000 years in the ceremonies of the North American peoples. In 1990 the United States Federal Court had allowed individual States to decide whether the use of peyote was legal or not. The States were therefore in a position to rule that peyote was a drug and to prosecute and convict the spiritual leaders of the American Indigenous Church for the use or transportation of peyote, a plant sacred for the indigenous people.

29. The United States Congress was currently considering document HR 510 (103 D Congress 1st session), which had aroused the concern of the International Indian Treaty Council. First, the tone of the document was a step back from the principles set out in the international instruments guaranteeing religious freedom and from those adopted by the Working Group on Indigenous Populations. Secondly, the authors of the document had had neither the time nor the will to listen to the traditional leaders or the members of the American Indigenous Church, who were most closely concerned in the guarantee of real religious freedom. Finally, the United States Government had imposed its own criteria for defining who was an Indian and who had the right to participate in preliminary discussions on the document or not. Chicanos and other indigenous people had thereby been barred from participation.

30. In the International Year of the World's Indigenous People, the International Indian Treaty Council asked that indigenous philosophies, religions and beliefs should be recognized as forming an integral part of mankind's spiritual heritage. The relevant rights should also form part of the universal declaration of indigenous peoples which was being prepared by the Sub-Commission through its Working Group.

31. The International Indian Treaty Council wished to pay a tribute to Mr. Angelo Vidal d'Almeida Ribeiro for his interesting report and to request him to give particular attention in his work to the religious situation of indigenous peoples.

32. Mr. FATIO (Baha'i International Community) said that of all the factors which gave rise to human rights violations throughout the world prejudice was certainly one of the most pervasive. And prejudice, whether of race, religion, nationality or sex, was notoriously difficult to eradicate because

it had no basis in logic or reason. Even the most enlightened legislation had no power to remove the seeds of prejudice from men's hearts and as long as those seeds of prejudice existed they would produce the poisonous fruits of intolerance, discrimination and even persecution.

33. In the view of the Baha'i International Community, the only sure means of eradicating prejudice was through education, for education dispelled ignorance. Education was the essential factor in securing the implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. The Declaration should be disseminated as widely as possible, particularly in educational establishments, and steps should be taken at both national and international levels to promote understanding, tolerance and respect in matters relating to religion or belief.

34. Baha'is believed that religious revelation was continuous and progressive and that from the very beginning of human history God had sent divine educators to the world to guide mankind. The appearance of each divine educator - Krishna, Buddha, Zoroaster, Abraham, Moses, Christ, Mohammed and in our own age the Bab and Bahá'u'lláh - had signified the founding of a new religion, which was at the same time part of the unfolding of the same religious truth proceeding from the same God. All those religions taught the same unchanging spiritual principles and differed only in their social teachings, which varied according to the needs of the age in which they were revealed. Baha'is accordingly believed in the divine origin of all the major religions and honoured their founders as prophets of God. They believed that Bahá'u'lláh, the founder of their faith, was the latest, but not the last, of the divine educators sent by God.

35. Given the essential oneness and unity of all religions, the elimination of all forms of divisive prejudice was a fundamental tenet of Baha'i belief. Baha'is condemned intolerance and discrimination and upheld the right of every human being to practise the religion of his or her choice.

36. The stated purpose of every religion was to promote unity and peace, yet the major stumbling-block which stood in the way of universal tolerance in matters of religion was the fact that religions were generally viewed as entirely separate entities. They were identified by their differences rather than by their similarities and were thus seen as being in conflict with one another. In the Baha'i view there was no conflict between the different religions, since religious truth was essentially one.

37. The Baha'i International Community wished to commend the work of Mr. Angelo Vidal d'Almeida Ribeiro and regretted that he was unable to pursue his mandate.

38. Mr. LITTMAN (International Fellowship of Reconciliation) said that the Deputy President of the Islamic Republic of Iran, Mr. Seyed Ataollah Mohajerani, in his statement on the previous day, had passed over in total silence the serious human rights violations in his country, described by Mr. Angelo Vidal d'Almeida Ribeiro in his report (E/CN.4/1993/62).

39. In his turn, the Sudanese Minister of Justice, Mr. Abdelaziz Abdalla Shido, had spoken with imperturbable aplomb of the respect shown by his Government for all religious beliefs without exception and of the peaceful coexistence between the various ethnic and religious communities in Sudan over the preceding decade. It was worth recalling that on a visit to Sudan a short time earlier the Pope had asked the Islamic Government of that country to put an end to religious persecution.

40. The position of Christians in the Islamic world was generally ever more precarious. Such was the case in Egypt, for example, where Copts had been massacred at Dairut, in the province of d'Assiut, on 7 May 1992 and where the fundamentalists had declared a holy war against Christians and Jews, although it should be added that President Mubarak had immediately declared that Egypt should remain a country where Christians and Muslims coexisted.

41. Under Algerian law national or foreign periodic and specialized publications must not contain any illustration, account, information or item contrary to Islamic morality, national values or human rights, or defend racism, fanaticism or treason. Speaking of the obligations of professional journalists, the same law forbade any direct or indirect defence of race, intolerance or violence, according to paragraph 6 of the report submitted by Algeria (E/CN.4/1993/52/Add.1). However, Jeune indépendant, an Algerian weekly with a wide circulation, had published the classic text of anti-Semitism, the Protocol of the Elders of Zion. When Georges Marion had protested in Le Monde against such a display of anti-Semitism the Jeune indépendant had replied in its issue of 10-16 December 1991 (No. 57), using such expressions as "world Jewry", "Yids international", "the Jewish underworld" and other offensive terms. It had also spoken of France being "Judaized through and through". Another Algerian publication, the newspaper El Khabar, had spoken of the "Jewish penetration of the Algerian State and Algerian society", whereas the Jewish community in Algeria consisted of no more than a few old people.

42. The number of Jews living in Arab countries was today barely 20,000, compared with about 1 million 40 years before. Two thirds of that million, together with their descendants, currently accounted for more than half of the Jewish population of Israel. Between 7,000 and 10,000 Jews lived in Morocco under the protection of King Hassan and were satisfied with their lot. There were around 2,000 Jews in Tunisia and a few hundred in Iraq, Egypt and Algeria. Most of the 2,000 Jews living in Yemen were denied the right to leave that country. The situation of Jews in Syria had improved considerably since the International Fellowship of Reconciliation had addressed the Commission the previous year (E/CN.4/1992/NGO/42) and the Sub-Commission on 25 August 1992. The Jewish community in Lebanon numbered no more than about 100, following the killing of nine Jewish hostages. The International Fellowship of Reconciliation called for the release of Sèlim Jamros, who might still be alive, and also the return of the bodies of Michel Seurat and Alec Collett to their families.

43. Mr. DARATZIKIS (Observer for Greece), speaking in exercise of the right of reply, said, for the information of the representative of Christian Democrat International, that in Greece freedom of worship was subject only to

the limitations of the fundamental freedoms of others and only proselytism was prohibited. The enjoyment of civil rights did not depend on the religious belief of the individual.

44. He added that, in accordance with the law, those who refused military service on religious grounds were offered the opportunity to serve without bearing arms. To date, no one had applied to take up that option. In 1988 the Ministry of Defence had presented a draft bill to Parliament introducing alternative service. The appropriate Parliamentary Committee had considered the bill to be unconstitutional, however, and it had not passed into law. The Ministry was currently working on a new draft to overcome problems of unconstitutionality.

45. As far as the new Greek identity cards were concerned, no final decision had been taken as to whether they should indicate the religion of the bearer.

46. The CHAIRMAN said that the Commission had concluded its consideration of agenda item 22.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

(d) QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (agenda item 10) (continued)

(E/CN.4/1993/4, 20, 21*, 22, 23 and Add.1, 24, 25 and Add.1, 26-28, 86; E/CN.4/1993/NGO/7, 9, 10, 18-20, 22; E/CN.4/1992/17, 18 and Add.1, 20; E/CN.4/Sub.2/1992/9 and Add.1, 17, 19, 22, 23/Rev.1, 24 and Add. 1-3; A/47/662; A/RES/47/109).

47. Mr. NOWAK (Austria) congratulated Mr. Kooijmans on the quality of his report on torture (E/CN.4/1993/26) and particularly supported his recommendations on preventive measures to eradicate the "plague ... of the twentieth century".

48. He also paid a tribute to Mr. Bacre Ndiaye, Special Rapporteur on extrajudicial summary or arbitrary executions, and to the Working Groups on Enforced or Involuntary Disappearances and on Arbitrary Detention. The Chairman of the Working Group on Arbitrary Detention, Mr. Joinet, had pointed out that the establishment of an effective mechanism for the prevention of arbitrary detention would at the same time substantially reduce the number of other, more serious violations of human rights, such as torture, disappearance and summary execution.

49. His delegation welcomed the readiness of the thematic rapporteurs and working groups to cooperate with the Special Rapporteur on the former Yugoslavia and expressed the hope that such fruitful cooperation between country-specific and thematic procedures would be followed in other cases as well.

50. It was, however, regrettable that the thematic procedures, which played a major role in the United Nations efforts for the protection of human rights, were in danger of being squeezed out of existence for lack of funds. Their personnel and financial resources were not adequate to their ever-increasing workload. The United Nations should take urgent measures to remedy that deplorable situation.

51. Also, as the Working Groups and Special Rapporteurs had suggested, stronger action needed to be taken with regard to States which systematically refused to cooperate or which neglected recommendations addressed to them. The credibility of the United Nations in the field of human rights was at stake.

52. Reports by the Working Groups could, for example, be given wider publicity, or else the Working Groups could be authorized to act on their own initiative, visiting countries accused of torture, disappearance, summary execution and arbitrary detention, reporting on the reactions of the Governments concerned and, if on-the-spot investigations had been carried out, pressing for appropriate measures in accordance with their recommendations. A further possibility was that representatives of the Working Groups could participate in the meetings of United Nations bodies set up under international treaties whenever they dealt with matters raised in the Working Group reports.

53. As the Special Rapporteur on torture had pointed out, "laxity and inertia on the part of the highest executive authorities and of the judiciary in many cases are responsible for the flourishing of torture". Governments were therefore under an obligation to take positive measures to implement recommendations made by the Working Groups.

54. As noted by the Chairman of the Committee against Torture, Mr. Voyame, the Special Rapporteur on the question of torture and the Human Rights Committee, preventive measures should be taken. For example, countries should strengthen the administration of criminal justice by efficient procedures of habeas corpus, adequate training for law enforcement and prison officers, the official registration of all detainees and places of detention, the recording of all interrogations, prompt access by lawyers, doctors and family members to detainees, the prohibition, without any exception, of any form of incommunicado detention, unannounced visits to all places of detention by independent commissions, an impartial investigation by independent authorities of every allegation of ill-treatment and, last but not least, punishment of any person responsible for an act of ill-treatment or torture. By applying such measures, most of which would not involve high costs, Governments could prevent most cases of torture, disappearance and summary execution.

55. Austria was actively participating in the Working Group on a draft optional protocol to the Convention against Torture, since it was convinced

that a system of regular visits to places of detention by an independent international body was one of the most efficient mechanisms for the prevention of torture. The experience gained from visits of the European Committee for the Prevention of Torture gave rise to optimism regarding the effectiveness of such a mechanism.

56. Mr. RHENAN SEGURA (Costa Rica) said that he had been asked by Mrs. Odio Benito, Chairman of the Working Group on the draft optional protocol to the Convention against Torture, to introduce the Group's report (E/CN.4/1993/28). The Working Group had proposed that the draft submitted by the Government of Costa Rica (E/CN.4/1991/66) should provide the basis and the frame of reference for its deliberations. The proposal was for a system of regular visits to places of detention in order to strengthen the protection of detainees against torture and other cruel, inhuman or degrading treatment or punishment. Such a preventive mechanism should be based on the principles of cooperation adopted by the States parties to the Convention against Torture, namely confidentiality, independence, impartiality, universality and effectiveness. It should not involve either the examination of individual cases or the ensure of States parties. Its aim would be prevention, by means of evaluating the conditions prevailing in places of detention and making recommendations regarding ways of improving detention practices and arrangements in order to ensure greater protection against torture. Cooperation and confidentiality, in particular, would be essential to the functioning of the mechanism. It was in no way a judicial mechanism, but an altogether preventive procedure based on cooperation.

57. Participants in the work of the Working Group, chaired by Mrs. Odio Benito, had included 29 representatives of States members of the Commission on Human Rights, 17 observer delegates and various non-governmental organizations. A variety of speakers had addressed the Working Group, including the Chairman of the Committee against Torture, the representative of the International Committee of the Red Cross, the Vice-Chairman of the European Committee for the Prevention of Torture, an expert from the Sub-Commission and the Special Rapporteur on the question of torture.

58. Turning to the issues raised in the Working Group's general discussions, he said that there had been particular stress on the fact that careful attention should be given to the relations between the proposed mechanism and other instruments and bodies in the same field in order to ensure that they were complementary and to set up proper cooperation; compromising the functioning of other treaty mechanisms should be avoided, particularly in view of the current financial difficulties; a detailed statement of the financial implications of the proposed mechanism should be drawn up; the Optional Protocol should be clear and balanced so that it could gain as wide acceptance as possible; the working methods of the proposed sub-committee should be clearly defined; and consideration should be given to the resources which could be made available to States parties to assist them in applying the sub-committee's recommendations.

59. The Working Group had also considered the legal status of the body which would be established under the protocol. On the whole those taking part had

favoured a body which would be largely independent of the Committee against Torture but having certain institutional links with it and which would inspire confidence in its status.

60. The Working Group believed that progress had been made with regard to the initial consideration of the draft Optional Protocol and that its deliberations should continue. The formal drafting work could begin during the course of the year. He hoped that the Committee would extend the mandate of the Working Group.

61. Mr. TOSEVSKI (Rapporteur, Working Group on Enforced or Involuntary Disappearances) said that the Working Group had greatly welcomed the adoption, at the previous session of the General Assembly, of the Declaration on the Protection of All Persons from Enforced Disappearance; the text of the Declaration appeared as annex II of the Working Group's report (E/CN.4/1993/25). After alluding to articles 1, 4, 6, 7 and 16 of the Declaration, he drew particular attention to articles 17 and 18, which stated that enforced disappearances would be considered a continuing offence as long as the perpetrators continued to conceal the fate and the whereabouts of persons who had disappeared and that persons alleged to have committed offences relating to enforced disappearances should not benefit from any amnesty law. The Working Group would retain in its files cases of disappearances as long as the whereabouts of the missing persons had not been determined.

62. The Working Group had also examined the question of impunity, which it considered the single most important factor contributing to the continuation of disappearances. Contributions from Governments and non-governmental organizations on the tentative consideration by the Working Group on the matter formed annex I of the report.

63. The Commission might wish to change the name of the Working Group in conformity with the title of the Declaration.

64. He drew the Commission's attention to paragraphs 36 to 44 of the report, which related to the question of disappearances in former Yugoslavia. The Working Group had considered what measures it should take with regard to those disappearances. From the first, it had followed the rule that disappearances which occurred during an international armed conflict fell outside its mandate. That rule, and the Working Group's general approach, had been put before the Commission in 1988 and neither then or at any time since had the Commission given any instructions to the Group to change its methods of work in any way. He therefore wished the Commission to provide clear guidance on how to proceed in those cases.

65. Following an invitation from the Government of Sri Lanka, three members of the Working Group had visited that country in October 1992. Cooperation from the Government and various organizations had enabled them to visit several places in the country. The findings of their mission could be found in the addendum to the report (E/CN.4/1993/25/Add.1).

66. New cases of disappearances transmitted to the Working Group during 1992 had amounted to 8,651, a figure that illustrated the dramatic increase in the

number of cases submitted to and dealt with by the Working Group. The number of cases on its computerized files requiring follow up action on the part of the Working Group had risen to some 35,000, occurring in 58 countries. In view of the increased number of cases submitted and the greater number of responses from Governments, the Working Group was having great difficulty in carrying out its mandate. Unless sufficient staff-time and personnel were assigned to the Working Group in 1993 an increasing proportion of the cases received would not be analysed or processed.

67. He said that the Working Group would continue to assist the Secretary-General in his consultations with appropriate professional organizations in the field of forensic science, on the understanding that such a task would require additional efforts on the part of the secretariat, which was already understaffed. The Working Group requested the Commission to take the measures necessary to overcome the difficulties he had outlined if it wished the mechanism on enforced disappearances under the aegis of the United Nations to retain its credibility and efficiency.

68. Mr. OYARCE (Chile) said that he wished to put forward some observations on three aspects of the question of human rights with a theoretical and political bearing on all cases of people submitted to any form of detention or imprisonment: the administration of justice, the optional protocol to the Convention against Torture, and enforced disappearances.

69. As far as the administration of justice was concerned, it was essential that human rights should be recognized and effectively protected by national and international standards and that structures should exist which could put a stop to abuses, restore legality and where necessary punish those responsible or guilty. It was essential that judges, magistrates and lawyers should be completely independent. The whole of society should also be vigilant and should defend to the last the right to a fair trial for anyone, whether strong or weak, rich or poor, governing or governed. The administration of justice could be considered under various headings, beginning with education: instruction in human rights should play an important part in training those responsible for the administration of justice. In that context, the Centre for Human Rights had an important role to play through its advisory services. Secondly, human rights, which were part and parcel of the basic principles recognized by the international community, should be immediately applicable without it being necessary to adopt a national law. Respect for human rights was inextricably linked with the administration of justice and the strengthening of the rule of law. In that connection, some follow-up would be desirable to resolution 1992/51, dating from the forty-eighth session of the Commission, on the strengthening of the rule of law. Thirdly, lawyers and members of the procurator's office should be able to exercise their functions in complete independence, without being subjected to any pressure. The study by Mr. Singhvi, the Special Rapporteur of the Sub-Commission, on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers (E/CN.4/Sub.2/1985/18) and the draft declaration on that subject (E/CN.4/Sub.2/1988/20/Add.1 and Add.1/Corr.1) were extremely telling. Respect for the right to defend oneself or be defended was also crucial; conditions for exercising such rights should be strengthened, particularly in exceptional circumstances such as a state of emergency or the use of military courts. Where the rule of law prevailed, a civilian should

never be brought before a military court. Fourthly, the rights of those sentenced to prison should be protected; in that regard the report by Mr. Chernichenko and Mr. Treat deserved careful attention. Fifthly, thought should be given to the question of dilatory tactics in civil and criminal cases.

70. He would like the Commission to invite the World Conference on Human Rights to examine the various aspects of the administration of justice which he had raised.

71. Turning to the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, he welcomed the stress placed on prevention, pointing out the quality of the work carried out by the Working Group set up by the Commission. The draft optional protocol was to be an instrument of international cooperation based on dialogue between the national authorities and the delegation of the body which would have the responsibility for carrying out visits. The procedure should operate on the basis of confidentiality and the preventive approach to the campaign against torture, envisaged by the draft optional protocol, should be expressed in the form of non-judgmental assistance to States. Indeed, the importance of a preventive instrument whereby the practice of torture could be eliminated fully warranted wide support and funding for the mechanism adopted from the international community. The body set up under the optional protocol should be funded through the regular United Nations budget. He concluded by expressing appreciation of the important role played by the non-governmental organizations, especially the International Association against Torture, in the discussions which should culminate in the establishment of an optional protocol.

72. With regard to enforced disappearances, he recalled that the Declaration on the Protection of All Persons from Enforced Disappearance, adopted by the General Assembly at its forty-seventh session, contained important provisions establishing that the crime of enforced disappearance was a continuing offence and laying down principles under which impunity could be effectively combated. The Government of Chile was also gratified to see that the text of the Declaration provided both for the cooperation of States and the United Nations in preventing and putting an end to enforced disappearances and for the obligation to bring to judgement all those responsible for acts constituting the crime of enforced disappearance. He recalled that according to a draft put forward by the Inter-American Commission on Human Rights any act bringing about an enforced disappearance would be a crime against humanity.

73. Mr. SENE (Observer for Senegal) said that the various measures taken at the international level to combat torture had by no means achieved their intended purpose. Emphasis should be placed rather more on prevention than on repressive or coercive measures. That was the aim of the draft optional protocol to the Convention against Torture, which provided for a system of preventive visits to places of detention. Since torture was usually carried out in places which it was desired to keep secret, the best way to combat the problem was to have access to such places. However, the Senegalese delegation, which had taken part in the work of the Working Group, believed that any system that was set up should be based on the principle of cooperation, since visits would not necessarily be connected with allegations

of torture. The body empowered under the draft protocol to organize visits (the Sub-Committee) should therefore notify the State party concerned in advance of its intention to carry out a visit and, in the view of his delegation, should allow that State time to prepare for the visit. The notification should also give the names of the experts and interpreters and indeed even list the places to be visited, on the understanding that such a list would not be considered restrictive. The experts should have complete freedom of movement, especially inside the places they were visiting. They should also be able to hold meetings without witnesses with people deprived of their freedom and to make contact with the parents, lawyers and doctors of detainees.

74. Following the visit, the experts' report, which would be based on attested facts, should take into account any observations made by the State concerned. The report should then be passed to that State, together with such recommendations as the Committee might deem necessary and of which the sole object would be to ensure better protection for people detained in the places visited.

75. If a State refused to cooperate or to improve the situation in compliance with the Sub-Committee's recommendations, the Committee against Torture could, at the request of the Sub-Committee, make a public statement on the matter or publish the report. That option should, however, be limited in order to maintain the credibility of the system, which was not intended to be punitive. It was also important to define precisely what was meant by a place of detention.

76. In conclusion, he said that Senegal considered that visits to places of detention were the best means of exercising international control to prevent acts of torture and would support the draft protocol.

77. Mr. CABASIANGO (Four Directions Council) said that in Ecuador the indigenous peoples constituted 45 per cent of the total population, or some 4 million people. In recent years transnational corporations, the armed forces and paramilitary groups had systematically violated their rights. Examples of such repression were legion. The Guarani people, which had been granted territory in the Amazonian region two years previously, had asked that a study should be carried out regarding the possible impact on the environment of the construction of a road in that region. At the request of a transnational corporation, the reaction of the armed forces had been to take severe repressive measures, including the use of torture.

78. Similarly, the Yuracruz people, numbering about 1,000, had been attacked by paramilitary groups, commanded by officers of the Ecuadorian army, who had burned down their houses, raped more than 50 women, tortured children and the elderly and killed many people. The population had then been moved to a place far from its own lands.

79. Finally, he said that he himself had been arrested by Ecuadorian soldiers during a peaceful demonstration by indigenous peoples in the north of the country. He had been kept in secret detention and tortured by soldiers and

the police. He had been released after several days, thanks to pressure from organizations of indigenous peoples. The Ecuadorian Government had never deigned to provide any explanation for his arrest and subsequent detention.

80. Mr. ANDREU (International League for the Rights and Liberation of Peoples) said that the international community was witnessing increasingly serious violations of human rights because they very often went unpunished.

81. In Rwanda, for example, impunity seemed to be the only law in force. Entire areas of the country considered by the Kigali Government to be under the influence of the Rwanda Patriotic Front (FPR) had fallen victim to a campaign of extermination. Any person belonging to the Tutsi ethnic group was automatically suspected of collaborating with the FPR. Disappearances, large-scale detentions, torture and killings had been organized systematically since the end of 1990 with the sole aim of terrorizing the population. In Kigali, the capital of the country, death squads operated with complete impunity, while large areas of the country were in the hands of paramilitary groups owing allegiance to the party in power. The judicial system was completely paralysed and the few judges who refused to be a party to the repression but chose to administer justice were being relieved of their responsibilities.

82. Impunity was not, however, restricted to so-called developing countries. In Spain, for example, where the trial was currently taking place of various members of the vigilante group GANE (Spanish National Antiterrorist Group), one of the accused had confessed that certain people holding political office were involved, yet only those who had actually carried out the crimes had been prosecuted, while those who were really in control had been left undisturbed.

83. Meanwhile, according to the Working Group on Enforced or Involuntary Disappearances, Peru had the dubious distinction of being the leading country in terms of the number of disappearances, followed by Sri Lanka and Colombia. The situation was particularly worrying since it had remained unchanged for many years. The Fujimori Government had disregarded the recommendations by the Special Rapporteur on the question of torture (E/CN.4/1989/15); torture was carried out daily and on a systematic basis by the State security forces. Moreover, the right to a fair trial and the most elementary guarantees of justice were flagrantly abused in Peru, as evidenced by the recent trial of Abimael Guzman, when his defence lawyers had also been sentenced to life imprisonment. The idea that persons accused of terrorism could be deprived of their rights as human beings and of their legal rights seemed to be gaining ground. Similar trials were beginning to be seen in other countries, particularly in Colombia. There could be no double standards where human rights were concerned. No political considerations could justify denying an individual his most elementary rights.

84. The human rights situation had also deteriorated in Venezuela. Following the failure of a coup d'état in November 1992, the Government had suspended constitutional guarantees. Taking advantage of the situation, the State security forces had unleashed a severe repression against the Venezuelan popular movement. Opposition party activists had been arrested, media censorship had been introduced and 26 people had been killed at a peaceful demonstration. None of those actions had been punished and there seemed no

likelihood of the situation improving, given that a draft bill had been tabled in the Venezuelan Parliament aimed at protecting members of the police force who were charged with murder from being placed in pre-trial detention.

85. The International League for the Rights and Liberation of Peoples considered the spread of impunity to be extremely worrying and called on the United Nations to take action without delay.

86. Mrs. SEIGEL (International Council of Jewish Women), speaking on behalf of a large number of non-governmental organizations whose names she read out, said that the time had come to recognize clearly and explicitly the crime of rape in international and humanitarian law.

87. Rape was an age-old form of torture that knew no boundaries. It was a problem of society, not just of women. The International Council of Jewish Women realized that the condemnation of rape was usually considered to be implicitly called for and punished in various United Nations conventions and that it was mentioned in the fourth Geneva Convention. However, international law imposed duties and liabilities upon individuals as well as upon States. Only by punishing individuals who committed crimes could the provisions of international law be enforced.

88. Yet currently there existed no international tribunal with jurisdiction to try and punish individuals responsible for war crimes or crimes against humanity. The International Council of Jewish Women hoped that the situation would shortly change and that a special tribunal would be constituted as soon as possible. It also hoped that rape would be considered a crime against humanity or even a war crime, especially when used as political strategy.

89. She pointed out that the need to punish the crime of rape had been recognized by the United Nations on several occasions: at the Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders, in the Commission on Crime Prevention and Control, in the Committee on the Elimination of Discrimination against Women, in the Sub-Commission on Prevention of Discrimination and Protection of Minorities and in the Commission on Human Rights itself, which had twice condemned rape, both in a resolution passed on 1 December 1992 at its Special Session on the former Yugoslavia (E/CN.4/1992/S-2/L.2) and more recently in the report by the Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia (E/CN.4/1993/50).

90. The International Council of Jewish Women therefore supported efforts to integrate the concerns regarding violation of the human rights of women throughout the human rights mechanisms of the United Nations and particularly of the Commission. It also proposed that the Commission should request the Sub-Commission to appoint a special rapporteur to study the phenomenon of rape as a violation of human rights and to propose practical measures to combat that crime.

91. The CHAIRMAN invited the observer of Algeria, who had asked to speak in exercise of the right of reply, to take the floor.

92. Mr. SEMICHI (Observer for Algeria) noted that the representative of the International Fellowship of Reconciliation apparently wished to set himself up as a censor of the Algerian press. He believed that the misjudged propaganda peddled by that NGO would ultimately alienate its own sponsors. He further suggested that it should turn an equally critical eye on the situation in South Lebanon. It was surprising to note that during the current session of the Commission on Human Rights one delegation and two non-governmental organizations, apparently unconnected with each other, had gone out of their way to describe Algeria in the same manner, even in the same terms, with attacks on "fundamentalism", the authorities and the Algerian press.

The meeting rose at 1 p.m.